

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO on the)	
relation of the State Engineer,)	
and THE UNITED STATES OF)	
AMERICA,)	
)	
Plaintiffs,)	
)	
v.)	No. CIV 7941-BB
)	RIO CHAMA STREAM SYSTEM
RAMON ARAGON et al.)	
)	Section 4: Rio El Rito
Defendants)	
)	
)	

**DEFENDANT EL RITO COMMUNITY DITCH ASSOCIATION'S
PROPOSAL FOR MEMORIALIZING WATER ALLOCATION CUSTOMS**

COME NOW the El Rito Community Ditch Association ("Association"), and pursuant to the Special Master's *Order Vacating Status Conference and Detailing Further Proceedings* entered on January 31, 2007 (Docket No. 8540), respectfully submits the following proposal for memorializing the water allocation customs practiced by the acequias and ditches of which the El Rito Community Ditch Association is comprised.

1. The El Rito Community Ditch Association diverts water from the Rio El Rito at six separate points of diversion and distributes the water through eleven named ditches. From times predating the jurisdiction of the State of New Mexico, the Association and its members have practiced a community custom of water allocation known as the "tiempo" system.

2. New Mexico law at NMSA 1978, §72-9-2 (1907) provides that "[i]n all cases where local or community customs, . . . are in force," the local customs shall govern distribution of water from ditches, laterals and irrigation systems to the person entitled to water and that such

customs shall not be molested or changed, “unless so desired by the persons interested and using said custom. . .” NMSA, 1978, §72-9-2 (1907). On January 7, 1999, this Court entered an *Order Granting Joint Motion for Adoption and Entry of Stipulation and Settlement Agreement* (Docket No. 5838) between the State of New Mexico and the El Rito Community Ditch Association.¹ The Stipulation and Settlement Agreement, filed on September 17, 1998 stated in part: “The parties further stipulate and agree that to the extent that local or community customs have been incorporated into the bylaws of a community ditch and have for their object the economical use of water and are not detrimental to the public welfare, such rules shall govern the distribution of water from such ditches to the persons entitled to water therefrom.”

3. The Association desires that this Court enter a judgment declaring that the “tiempo” system is the community custom in force within the El Rito Community Ditch and proposes the following procedure:

a. The Association shall file with this Court and serve on the State of New Mexico a *Motion for Declaration of Water Allocation Customs* no later than March 23, 2007. Such motion shall describe in detail how the tiempos system is applied within the community of El Rito. At the time of filing, the Association shall provide the State of New Mexico with documentation regarding the history and application of customs within the Community of El Rito.

b. The State of New Mexico shall inform the Court whether it opposes on the Motion for Declaration of the Customs at the regularly scheduled status conference on May 1, 2007, and shall state whether its opposition is jurisdictional, procedural or substantive in nature.

¹ The Stipulation and Settlement Agreement also included thirty-seven community acequias that divert from the Rio Vallecitos, Rio Tusas and Rio Ojo Caliente in Section 2 of the Rio Chama adjudication suit

c. If the State of New Mexico opposes the Motion on either procedural or jurisdictional grounds, the Court shall set a schedule leading to resolution of this dispute at the May 1 status conference. If the State of New Mexico opposes the Motion on any substantive grounds, then it shall so state. Resolution of the State's substantive objections shall be reserved to an evidentiary hearing on objections of other claimants, if any, as described in Paragraph 4 below

4. If the State of New Mexico has no objections on procedural or jurisdictional objections to the Motion, or after resolution of such objections, the following procedure shall be followed:

a. The Association shall serve by mail a copy of the *Motion for Declaration of Water Allocation Customs* on all persons of record known to claim the use of water from the Rio El Rito delivered through any of the acequias or ditches under the jurisdiction of the El Rito Community Ditch Association. The Association shall utilize the records of the Office of State Engineer WATERS database, the records of the Association and any other data to ensure that any potential claimant is notified. The Motion shall be accompanied by an information sheet that states where documentation regarding the history and application of the *tiempo* system within the Community of El Rito can be reviewed. The Motion shall set forth a deadline for filing objections to the Declaration and shall set forth a procedure for filing such objections.

b. Contemporaneous with service of the Motion on individual claimants, the Association shall cause to be published in the Rio Grande *Sun* a Notice of the *Motion for Declaration of Water Allocation Customs*. The Notice shall state where supporting documentation regarding the history and application for the *tiempo* system may be

reviewed and shall set forth the deadline and procedure for filing objections to the Declaration.

c. The Association shall place copies of supporting documentation regarding the history and application of the *tiempo* system in the El Rito Library and the New Mexico State Archives and other places where such information can be reviewed by claimants.

d. After the time for filing objections has expired, the Association shall file a status report and shall move for a status and scheduling conference for further proceedings leading to an evidentiary hearing.

Respectfully submitted,

/s/ Mary E. Humphrey

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of February 2007, I filed the foregoing document electronically through the CM/ECF system.

/s/ Mary E. Humphrey